HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

CASE NO: 21542/2020

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: NO.
(2) OF INTEREST TO OTHER JUDGES: YES
(3) REVISED.
DATE 30 June 2020
SIGNATURE

In the matter between:

THE MINSTER OF COOPERATIVE

GOVERNANCE AND TRADITIONAL AFFAIRS Applicant

and

REYNO DAWID DE BEER First Respondent

LIBERTY FIGHTERS NETWORK Second Respondent

HOLA BON RENAISSANCE FOUNDATION Amicus Curiae

J U D G M E N T (Leave to appeal)

DAVIS, J

[1] Introduction

1.1 On 2 June 2020 this court delivered a judgment at the conclusion of which regulations promulgated by the Minister of Cooperative Governance and Traditional Affairs ("the Minister") in terms of section 27(2) of the Disaster Management Act 57 of 2002 ("the DMA") were declared unconstitutional and invalid. The declaration of invalidity was suspended and the Minister was afforded 14 days within which she had to review, amend and republish the regulations in respect of Alert Level 3 save for certain exclusions mentioned in the order "with due consideration to the limitation each regulation has on the rights guaranteed in the Bill of Rights contained in the Constitution".

1.2 The Minister opted not to review, amend or republish the impugned regulations in compliance with the aforementioned order but rather to apply for leave to appeal against the whole of the judgment and the orders made on 2 June 2020. The Minister is entitled to do so in terms of the provisions of the Superior Courts Act 10 of 2013. I shall deal with the specific requirements applicable to such an application hereinlater.

1.3 The application for leave to appeal is opposed by the initial applicants, Mr De Beer and the Liberty Fighters Network, as well as an amicus curiae, the Hola Bon Renaissance Foundation also known as "The African Empowerment".

[2] The applicable legal framework

2.1 In the initial judgment, I have found that, on the papers then before me, the Minister had acted rationally in declaring a National State of Disaster pursuant to an assessment of the potential magnitude and severity of the Covid 19 pandemic by the Head of the National Disaster Management

Centre and its classification as a national disaster in South Africa. There is no application by any party to appeal this finding.

2.2 Once a National State of Disaster has been declared, the Minister may, subject to certain limitations, make regulations to augment existing legislation to deal with the disaster caused by the pandemic.

2.3 The exercise of the Minister's power to make regulations constitute executive action. As such, this court has found in para 6.1 of the initial judgment that the exercise of such power is subject to the following limitations:

- *"The statutory limitation contained in the enabling legislation prescribed that the power "may be exercised only to the extent that this is necessary for the purpose of –*

  (a) assisting the public;

  (b) providing relief to the public;

  (c) protecting property;

  (d) preventing or combating disruption; or

  (e) *dealing with the destructive and other effects of the disaster*";

- *In order to comply with the Constitutional control of public power, the exercise of such power is subject to the doctrine of legality, which is, in turn, an incident of the rule of law. In order to pass the legality test, the exercise of public power, in this instance the regulations promulgated by the Minister, must objectively be rationally related to the purpose for which the power was conferred;*

- *In addition to the above, where the exercise of public power infringes on or limits constitutionally entrenched rights, the test is whether such infringements are justifiable in terms of Section 36 of the Constitution in an open and democratic society based on human dignity, equality and freedom".*

2.4 In order to obtain leave to appeal against this court's judgment wherein it has been found that the Minister's exercise of public power fell short of the rationality and constitutional requirements or, to put it differently, where the finding was that the exercise of power exceeded the constitutional limitations of such power, she needs to satisfy the following requirements:

> *"(i) the appeal would have a reasonable prospect of success or*
>
> *(ii) there is some other compelling reason why the appeal should be heard ..."* (Section 17(1)(a)(i) and (ii) of the Superior Courts Act 10 of 2013).

2.5 None of the abovementioned legal principles nor the requirements necessary to obtain leave to appeal were in dispute at the hearing of the Minister's application for leave to appeal.

[3] Ad: the Section 17(1)(a)(i) requirement - reasonable prospects of success of an appeal:

Under this rubric, the Minister advanced four contentions in her application for leave to appeal:

3.1 That the initial applicants have failed to raise a valid constitutional attack;

3.2 That this court has "strayed beyond the pleadings";

3.3 That the "wholesale" declaration of invalidity was not justified; and

3.4 That the orders granted are "unduly vague".

[4] Ad: the failure to raise a constitutional attack:

4.1 The Minster referred to various judgments in her notice of application for leave to appeal which prescribe that a party wishing to challenge the Constitutionality of legislation or conduct should do so with specificity[1].

4.2 The purpose of these prescripts is so that the other party is adequately informed of the case it has to meet and, in instances where the proportionality test contemplated in section 36 of the Constitution may be relied on, such a party is given the opportunity to place information before a court relevant to the issue of justification.

4.3 The complaint by the Minister is that the initial applicants have failed to formulate their constitutional attack with sufficient precision. Apart from the limitation of the right of assembly, attacked by the initial applicants as an improper prohibition against "gatherings", the Minister argues that the other Constitutional rights allegedly infringed by the regulations have been described in too vague terms by the initial applicants. This, so it was argued on behalf of the Minister, meant that she did not know what case to meet and was thereby denied a fair hearing.

4.4 This contention is not supported by the facts. The initial applicants have expressly referred to the limitations imposed by the regulations on the Constitutional rights to assemble, the right to dignity, the rights of "the

[1] Prince v President, Cape Law Society 2001 (1) SA 388 (CC), Shaik v Minister of Justice And Constitutional Development 2004 (3) SA 599 (CC), Phillips v NDPP 2006 (1) SA 505 (CC) and Public Servants Association obo Ubogu v HOD health, Gauteng 2018 (2) SA 365 (CC)

most vulnerable low-to-medium income earners of our country… leaving them begging to survive". The limitation on the rights of freedom to trade have also been referred to. Examples of desperate earners like single mothers becoming destitute had been given. In addition, the rights of "freedom of movement, residence and to earn an income to survive" were raised in these very words as part of the initial applicants' challenges.

4.5 Yes, the challenges were raised "inelegantly", in the words of counsel for the initial applicants, but he was at pains to point out that they were drafted by the first initial applicant, a lay person and who also appeared in person.

4.6 The case law relied on by the Minister in her notice also indicate that the principles referred to in paragraph 4.1 above need to be applied on a case-by-case basis. In Shaik's case (supra footnote 1) the Constitutional Court held as follows at paras 24 and 25:

> "*It (the requirement of particularity of a Constitutional challenge) constitutes sound discipline in constitutional litigation to require accuracy in the identification of statutory provisions that are attacked on the ground of their initial invalidity. This is not an inflexible approach. The circumstance of a particular case might dictate otherwise. It is, however, an important consideration in deciding where the interests of justice lie*". (my emphasis).

4.7 The initial applicants are criticized for having relied on a generalized allegation that virtually all basic rights (i.e those contained in the Bill of Rights) have been violated. The generalized allegation contained in the initial applicants' founding affidavit was however, in the nature of a conclusion, as it were, and followed after the paragraphs wherein the issues referred to in paragraph 4.4 above have expressly been raised. Moreover,

a mere reading of the regulations themselves reveal that this "particular case dictates" (to use the words quoted above) with sufficient clarity that the rights of freedom and security of the person (section 12), the right to privacy (section 14), the right of freedom of religious observances (section 15), the right of assembly (section 17), the right of freedom of association (section 18), the right of freedom of movement (section 21) and the right of freedom of trade (section 22), all being rights enshrined in chapter 2 the Constitution, are curtailed or infringed upon.

4.8 The most compelling ground however, as to why this point cannot succeed on appeal, is that it is not supported by the record of the Minister's own conduct. In the affidavit filed on her behalf, the Director General of the department was under no illusion of the challenge that had to be met. She commenced the chapter in the answering affidavit dealing with the issue of justification of infringement of rights in terms of section 36 of the Constitution as follows: "*It is (an) obvious fact that the lockdown regulations limit the constitutional rights contained in chapter 2 of the Constitution. The issue is whether the limitation passes muster (as) set out in section 36 of the Constitution*". She continued a few paragraphs later: "*It is conceivable that the lockdown regulations limit the rights inter alia to freedom of movement, trade, to demonstrate and to assemble, to mention a few.*"

4.9 The purpose of informing the Minister of the constitutional challenge she had to meet (as referred to in paragraph 4.2 above) apart from the many other challenges raised in the initial applicants' papers, had clearly been satisfied.

4.10 For the above reasons, I find that there is no reasonable prospect that an appeal on this ground would succeed.

[5] Ad: the "straying" of the court beyond the pleadings

5.1 The argument on this issue has as its foundation the following chronology as set out in the Minister's application for leave to appeal:

- The Level 4 regulations were promulgated on 29 April 2020;

- The application was launched on 13 May 2020 wherein the Level 4 regulations were referred to as "the new regulations" (as opposed to the Level 5 regulations);

- The Minister belatedly (in circumstances set out in the judgment) filed her answer on 26 May 2020, causing the matter to be heard on 28 May 2020;

- On the same day the Level 3 regulations were published.

5.2 Based on the above chronology, it is now argued that the applicants' attack was limited to the Level 4 regulations and not the Level 3 regulations and that the Minister was not called upon to "defend" the Level 3 regulations, nor did she have an opportunity to do so.

5.3 During the hearing of the initial application, I enquired from the parties what their views were regarding the appropriateness of a court dealing with the application whilst all present in court were acutely aware that outside court the factual landscape was being changed by the promulgation of Level 3 regulations by the Minister (which event had already been announced by the President some days before).

5.4 The most vehement proponent urging me to consider the issues of rationality and constitutionality in view of and by taking Level 3 regulations into consideration, was counsel for the Minister. To enable this to take place, I was even urged to delay the judgment until such time as I had the opportunity to peruse and consider the Level 3 regulations (I assume that this was done on the expectation that the Level 3 regulations might conceivably be more constitutionally compliant than the Level 4 regulations). The other parties, that is the initial applicants and the amicus curiae also agreed that I consider the Level 3 regulations. It must also be remembered that the initial applicants in their notice of motion sought an order declaring all of the regulations promulgated by the Minister, irrespective of their dates or levels, set aside.

5.5 I have referred to the abovementioned facts in paragraphs 3.2, 3.3, 5.2, 7.13 and 7.15 of the judgment in the initial application. I should also point out that the Level 3 regulations are neither exceptional in nature nor novel when compared to the Level 4 regulations. They are materially the same, but with lesser limitations of rights. Counsel for the Liberty Fighters Network, Adv Willis, described them as being "from the same DNA".

5.6 Adv Trengove SC who appeared as the lead counsel for the Minister in the application for leave to appeal and who argued this point, was not involved in the initial application and he pointed this out when I alerted him to the facts referred to in paragraph 5.4 above.

5.7 In the circumstances where the parties to the initial application, including the Minister, had urged this court to take the Level 3 regulations into consideration in adjudicating the matter and in formulating any relief which the court may grant, I find that it is not open for the Minister, when the

court has acceded to that request, to raise this as a ground to be advanced on appeal. Accordingly no leave to do so should be granted.

[6] Ad: the "wholesale" declaration of invalidity

6.1 The argument on this aspect is that in the circumstances where the judgment in the initial application only listed a limited number of regulations of the Level 3 regulations as being invalid (on the basis of failing the rationality test), the court was not entitled to "strike down" all other lockdown regulations.

6.2 The regulations expressly mentioned in paragraphs 7.1 to 7.10 of the judgment were regulations 33(1)(e), 34, 35(1), 35(3), 39(2)(e), 39(2)(m) and 48(2). In respect of the regulation of the "operation of the economic sector", the Minister's application for leave to appeal contends that the judgment only referred to item 7 of table 2, but this is not correct. In paragraph 7.2 of the judgment, the "blanket ban" on operators in the informal sector of the economy was also referred to.

6.3 Apart from the generalized grounds on which the Minister relies in her application for leave to appeal as set out in paragraph 3 above, there is no attack on the findings of patent irrationality in respect of the individual regulations listed in paragraph 6.2 above. Should the other grounds therefore fail and leave to appeal be refused, the requirement to bring these listed regulations within the ambit of the Constitution would remain.

6.4 The question is therefore whether leave to appeal should be granted in respect of whether a "blanket" declaration of invalidity beyond the individually identified regulations listed above was correct or not. I find that there is a reasonable prospect of success on appeal on this issue. A court granting leave to appeal may, in so doing, limit the issues on appeal

in terms of Section 17(5)(a) of the Superior Courts Act and I shall do so in the order which I intend making.

[7] Ad vagueness of relief

7.1 The fourth and final ground on which the Minister contends she would be successful on appeal is that the orders granted were "unduly vague".

7.2 This contention is put thus in the Minister's application: the "... *orders require the Minister to review, amend and republish all the lockdown regulations except for a few excluded from this order* [2]. *These orders are unduly vague because they do not tell the Minister what is required of her to comply with the orders. They more particularly do not tell the Minister which regulations she must amend and how she must amend them*".

7.3 It is accordingly necessary to examine this complaint of the Minister in order to evaluate if there is a reasonable prospect that it would be successful on appeal.

7.4 Firstly, it is trite that the orders must be read together with the judgment as a whole. This court has found that the listed regulations display patent irrationalities. The finding was further that these irrationalities lead to a "disconnect" between the measures and the stated object of preventing or limiting the spread of the virus. It was found that this further lead to an absence of constitutional justification of the infringement of rights caused thereby. It should be a simple exercise to review the listed regulations, remove the irrationalities and amend and republish the regulations. I fail to see how this issue can be dealt with differently on appeal.

---

[2] Regulations 36,38,39(2)(d) and 41.

7.5 Secondly, the judgment found (in paragraphs 7.16 and 7.17 thereof) that, once the commendable and necessary objective of "flattening the curve" by way of retarding or limiting the spread of the virus had been achieved, no regard was given to the extent of the impact of each individual regulation on the constitutional rights infringed thereby, specifically those entrenched in Chapter 2 of the Constitution, and whether the extent of the infringement caused by each such regulation was justified or not.

7.6 Where, as stated in paragraph 6.4 of the judgment, the purpose of the rationality enquiry is not whether there are other or better means that could have been used (but only "whether the means selected are rationally related to the objective sought to be achieved[3]"), the proportionality test in terms of section 36 of the Constitution "*entails an analysis of all relevant considerations to determine the proportionality between the extent of the limitation of the right considering the nature and importance of the infringed right, on the one hand, and the purpose, importance and effect of the infringing provision, taking into account the availability of less restrictive means available to achieve that purpose*[4]".

7.7 It therefore follows that in every instance where the exercise of executive power impacts on or infringes on those rights of people enshrined in Chapter 2 of the Constitution, an evaluative exercise must be undertaken to determine the extent of the infringement and the social justice impact thereof. The evaluative exercise involves both a consideration of the justification of the impact and the determination of appropriate steps to mitigate such impact. This is not new law nor a novel concept, it is an obligation imposed by section 36 of the Constitution. It follows on the

---

[3] Allbutt v Cenre for the Study of Violence and Reconciliation and others 2020 (3) SA 293 (CC) at para [51]
[4] Minister of Home Affairs v Nicro and others 2005(3) SA 280 (CC) at para [37] quoting from S v Manamela and Another Director-General of Justice intervening 2000 (3) SA 1 (CC) at para [66], being a case quoted by Adv Willis.

onus imposed on the executive who curtails constitutional rights, to be able to justify such curtailment. This has been referred to in paras 9.3 and 9.5 of the initial judgment. The Constitutional Court has described the exercise to be undertaken as follows:

> "*The approach to limitation is, therefore, to determine the proportionality between the extent of the limitation of the right considering the importance of the infringed right, on the one hand, and the purpose, importance and effect of the infringing provision, taking into account the availability of less restrictive means available to achieve that purpose*". See Phillips v Director of Public Prosecutions 2003 (3) SA 345 (CC) at para [22], again quoting from S v Manamela (supra at footnote 4).

7.8 Again, this is an exercise that the Minister must undertake and for this court to have prescribed how exactly the regulations must be amended, would improperly have crossed the boundaries of the separation of powers[5].

7.9 The need to adjust or limit the extent of the exercise of executive authority during the worldwide COVID 19 pandemic to be constitutionally complaint, is not a concept limited to South Africa. In heads of argument filed by the initial applicants in opposition to the Minister's application for leave to appeal, reference was made to a recent judgment by the Supreme Court of Wisconsin. At my request, copies of the judgment were made available to the court and the parties. The contents of the judgment are both apposite and instructive. The facts are briefly that an official in the same position and circumstances as the Minister, had promulgated regulations in Wisconsin to deal with the COVID 19 pandemic whereby

[5]Minister of Health v Treatment Action Campaign and othersII 2002(5) SA 721 (CC) at para [38].

she imposed a blanket travel ban and ordered the closure of businesses she deemed not to be essential by way of an "Emergency Order". In similar fashion as the Director-General did in the present application on behalf of the Minister, the Wisconsin official claimed in court papers that "*she can implement all emergency measures necessary to control communicable diseases ... even at the expense of fundamental liberties ...*" . The Wisconsin Supreme Court found this contention to be "constitutionally suspect". It went on to deal with the constitutionality issue (separate from other attacks against the "Emergency Order" such as exceeding the bounds of the enabling legislation and proceeding without oversight) with reference to similar circumstances in the United State of America as follows[6]:

> "*As the United States Department of Justice has recently written in a COVID 19 – related case raising constitutional issues: 'there is no pandemic exception ... to the fundamental liberties the Constitution safeguards. Indeed, individual rights secured by the Constitution do not disappear during a public health crisis. These individual rights, including the protections in the Bill of Rights ... are always in force and restrain government action". Statement of Interest, Temple Baptist Church v City of Greenville, no4: 20 – cv – 64 – DMB – JMV (N.D. Mississippi April 14, 2020)*"

These principles are equally applicable to the case at hand. The only curtailment of rights authorized by our Constitution is when Parliament has declared a State of Emergency in terms of section 37 of the Constitution and even therein certain limitations and oversight functions are provided

---

[6] Wisconsin Legislature v Secretary-Designee Palm and others (fifteen amici curiae intervening) case no 2020AP65 – OA, Supreme Court of Wisconsin, May5, 2020.

for. For the remainder, any limitation of rights are provided for by way of the evaluative proportionality exercise provided for in Section 36 of the Constitution as referred to in the initial judgment and in paragraph 7.7 above.

7.10 During the hearing of the application for leave to appeal, the amicus curiae bemoaned the fact that the Minister chose not to at least attempt to amend the regulations to be constitutionally complaint but rather to seek leave to appeal the judgment, but, as already pointed out, that is the procedural and constitutional right of the Minister.

7.11 When the initial judgment is therefore read together with the directions contained in the orders, I find no reasonable prospect that an appeal on this point would be successful.

[8] Compelling reasons for hearing an appeal

8.1 Mr Trengove SC argued that the issues raised in the application are of national importance and required serious debate. He argued that the Minister was neither "technical nor callous". The Minister in her application for leave to appeal submitted that the importance of the matter constitutes a "compelling reason" why leave to appeal should be granted as contemplated in Section 17(1)(a)(ii) of the Superior Courts Act.

8.2 Having regard to the issues set out in paragraph 6 above, I disagree. There was no dispute at the hearing of the application for leave to appeal about the legal principles applicable as set out in paragraph 2 above which needs to be finally determined by the Supreme Court of Appeal. The only question is whether the Minister has complied with them or not. Even this question has been narrowed as set out above. The only question is whether an order should have been granted in respect of all of the Level 3

Regulations or only in respect of those cited which displayed clear instances of unexplained irrationality. Once leave is granted on that score in terms of Section 1791)(a)(i) of the Superior Court Act, there is no other "compelling reason" for leave to be granted.

[9] Prior to proceeding with this judgment, there are two outstanding aspects which need to be dealt with:

9.1 Mr De beer, in his address in person, submitted that the delivery of the Minister's application for leave to appeal did not have the effect of suspending this court's order in the initial application and consequently the running of the 14 day period ordered therein was not interrupted. This is not so. Section 18(1) of the Superior Courts Act 10 of 2013 expressly provides that, unless a court on application and under exceptional circumstances orders otherwise, the "*operation and execution of a decision which is the subject of an application for leave to appeal or of an appeal is suspended pending the decision of the application or appeal*". In this case, there was no application for the immediate implementation of the order pending the application for leave to appeal. The principal case law on which Mr De Beer relied[7] for this contention despite the provision contained in the aforementioned section of the Superior Courts Act firstly dealt with an instance where the time period ordered by a court had already lapsed without an application for leave to appeal having been lodged. It is therefore to be distinguished from the present circumstances. Secondly, in that decision the learned judge dealt with the matter with reference to Rule 49(11) which has since been repealed and been replaced by aforementioned section 18(1). Thirdly, the decision featured in a later reported judgment of

[7] Central Africa Road Services (Pty) Ltd v Cross-Border Road Transport Agency (60113/2013) [2013] ZAGPPHC 550 (1 November 2013)

the Constitutional Court wherein the doctrine of objective constitutional invalidity has been dealt with[8]. Although the court confirmed (at paragraph [14] of that judgment) that once a law has been found inconsistent with the Constitution it ceases to have legal consequences, a court, while making such a finding, can limit the retrospectivity of such a finding or suspend such a finding on any condition. This is in terms of section 172(1)(b)(i) of the Constitution. Once any such an order made by a court or the finding of unconstitutionality itself is, however, the subject of appeal proceedings, the consequences of such findings are suspended and Mr De Beer's contention that the law (or, in this case, the executive action) can simply be ignored as if the invalidity has finally been determined, is not correct.

9.2 The amicus curiae also supported the judgment of this court granted in the initial application and proceeded to list the numerous fundamental rights of South Africans affected by the regulations. On the issue of alleged vagueness, the amicus made the point that, given the capacity of consultants, advisors, experts and professionals that the "State" (i.e. the Minister) has access to, it should not "require to be spoon-fed by the court" in order to determine what it has to do to render the regulations justifiable in terms of Section 36 of the Constitution. One of the amicus' conclusionary remarks contained in its heads of argument was: "*a proactive State and a caring State that want to save lives would have done a proper national disaster assessment and ... would have opted to identify and focus on the ... most vulnerable ... people with underlying health conditions and the elderly with weak immune systems*". Various suggestions were put forward and references were made to new events which occurred subsequent to the granting if the initial order. The

[8] Cross-Border Road Transport Agency v Central Africa Road Services (Pty) Ltd 2015 (5) SA 370 (CC).

suggestions would however encroach on the separation of powers doctrine already referred to and therefore cannot be entertained.

[10] The changing factual landscape

As already indicated, at the hearing if the initial application, I had raised the issue of the changing factual landscape, then taking place even during the hearing. Relevant to the application for leave to appeal, is the fact that the regulations have been amended numerous times. Amendments were effected prior to the delivery of the application for leave to appeal, again prior to the hearing thereof and yet again since the hearing of the application and during the few days that the judgment had been reserved. No indications have been given by the Minister whether these amendments were in response to the initial judgment or whether they were simply made in the course of dealing with the pandemic. Similarly, no indications were given by the Minister as to whether the evaluative exercise required by the proportionality test envisaged in Section 36 of the Constitution has been undertaken this time round or not. More fundamentally, it might be that, objectively speaking, some of the relief or grounds upon which it had been claimed, have become moot. Mootness is a factor affecting the questions as to whether leave to appeal should be granted or not[9]. So is the issue of peremption. Peremption occurs where a person, through his or her conduct appears to comply with a court order. Once this occurs, such a person is then precluded from asking for leave to appeal against the order with which it has complied[10]. The Minister was silent on these issues and the court was left in the dark in respect thereof. Unsatisfactory as this may be, the application will be dealt with as if none of the issues have become moot and no rights of appeal have become perempted.

---

[9] See: Section 16(2)(a)(i) of the Superior Courts Act.
[10] See: Erasmus, Superior Court Practice, Second Edition, Volume1 at A2 – 50c

[11] Conclusions

The conclusions are that the Minister should be granted leave to appeal against the "blanket" declarations of invalidity but should still be required to review and remedy those identified regulations which displayed clear lack of rationality and constitutional compliance. In respect of these lastmentioned regulations, leave to appeal will be refused and the remaining 10 business days left from the original order again commence running. Ironically though, the factual position is that some of these regulations may already have been "corrected", if not in respect of the constitutional approach, then at least, to a larger or lesser degree, in respect of the rationality requirement.

[12] Order:

1. Leave is granted to the Minister of Cooperative Government and Traditional Affairs ("the Minister") to appeal to the Supreme Court of Appeal against the declaration of invalidity of those regulations promulgated in terms of section 27(2) of the Disaster Management Act 57 of 2002 which have not been expressly identified in the judgment of this court dated 2 June 2020.

2. Leave to appeal the remainder of the judgment and orders, including leave to appeal against the declaration of invalidity of those regulations mentioned in the judgment, being regulations 33(1)(e), 34, 35, 39(2)(m), the exception to reg 46 (1) and 48(2), is refused.

3. Costs of the application for leave to appeal, shall be costs in the appeal.

N DAVIS
Judge of the High Court
Gauteng Division, Pretoria

Date of Hearing: 24 June 2020

Judgment delivered: 30 June 2020

APPEARANCES:

For the first Applicant:	Adv W Trengove SC together with Adv M S Phaswane and Adv A Hassim
Attorney for Applicant:	The State Attorneys, Pretoria
For the First Respondent:	In person
For the Second Respondent:	Adv R S Willis together with Adv AB Omar
Attorney for Second Applicant:	Zehir Omar Attorneys, Springs c/o Friedland Hart Solomon & Nicholson Attorneys, Pretoria
For the Amicu Curae:	Mr B P Mothopeng